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IN THE

Supreme Court of the United States

October Term, 1956

No. 507

PHILIP LANDES, *Appellant*

v.

SYLVIA LANDES (SYLVIA SMITH), *Appellee*

On Appeal from the Court of Appeals of
The State of New York

JURISDICTIONAL STATEMENT

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October 12, 1956

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SYLVIA LANDES (SYLVIA SMITH), *Appellee*

On Appeal from the Court of Appeals of The State of New York

JURISDICTIONAL STATEMENT

Appellant appeals from the judgment of the Court of Appeals of the State of New York, entered on May 31, 1956, affirming the order of the Appellate Division of the New York State Supreme Court, First Judicial Department, which affirmed without opinion, an order of the Domestic Relations Court of the City of New York, Bronx County. The Domestic Relations Court order directs that the appellant pay $20.00 a week for

the support of his child, residing with his former wife and her present husband in the State of California, without any custody or visitation rights being granted to appellant.

He submits this statement to show that the Supreme Court of the United States has jurisdiction of this appeal, and that several novel and substantial questions of public and national importance, not heretofore decided by this Court, are presented.

OPINIONS BELOW

The opinion of the New York State Court of Appeals is reported at 1 N. Y. 2d 358. A copy of this opinion is annexed hereto as Appendix A.

The order of the Appellate Division of the New York State Supreme Court, First Judicial Department is reported at 1 App. Div. 2d 772.

The opinion of the Domestic Relations Court of the City of New York, Bronx County, is reported at 207 Misc. 460.

JURISDICTION

This action was instituted against appellant by his former wife, the appellee, in the Superior Court of California, County of Los Angeles, under the California Uniform Reciprocal Enforcement of Support Act (Cal. Code of Civil Proc. Pt. 3, Tit. 10-a, §§ 1650-1690). The case was then forwarded and certified to the Domestic Relations Court of the City of New York, Bronx County, for determination and enforcement pursuant to the reciprocal provisions of the uniform statute (Cal. Act, § 1676; New York Uniform Support of Dependents Law, L. 1949, Ch. 807, § 6).

The order of the Domestic Relations Court, as affirmed by the Appellate Division of the New York State Supreme Court, First Judicial Department, was affirmed on May 31, 1956, by the Court of Appeals of the State of New York, and the Notice of Appeal was duly filed on August 17, 1956. This Jurisdictional Statement and the record were duly filed in this Court on October 12, 1956, less than sixty days after the filing of the Notice of Appeal.

The jurisdiction of the Supreme Court to review this case on appeal is invoked under 28 U.S.C., § 1257 (2), since the validity of the reciprocal support laws of California and New York have been challenged unsuccessfully in the Courts of New York State on the ground of their being repugnant to the United States Constitution. The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on appeal in this case: *Kansas City S. R. Co.* v. *Road Improvement District*, 256 U.S. 658, 659-660; *Atchison R. Co.* v. *Pub. Util. Comm.*, 346 U.S. 346, 348-349; *Dobbins* v. *Erie County*, 16 Pet. 435.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Art. I, Sec. 10, subd. 3, of the Constitution of the United States: "No State shall, without the Consent of Congress, . . . enter into any Agreement or Compact with another State, . . ."

Art. IV, Sec. 2, of the Constitution of the United States: "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

Amendment XIV, Sec. 1, of the Constitution of the United States: "No State shall make or enforce any

law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The primary statute involved on this appeal is the New York Uniform Support of Dependents Law, Chapter 807 of the Laws of 1949 of the State of New York. Also involved is the California Uniform Reciprocal Enforcement of Support Act, Title 10-a, comprising Sections 1650 to 1690, inclusive, of Part 3 of the Code of Civil Procedure. The complete texts of these statutes are set forth in Appendix B hereto.

QUESTIONS PRESENTED

1. Whether the reciprocity provisions of the New York and California support of dependents statutes contravene Art. I, Sec. 10, subd. 3, of the Federal Constitution, forbidding any State from entering into any agreement or compact with another State without the consent of Congress.

2. Whether these statutes operate to deprive appellant of his federal constitutional rights to equal protection of the respective state laws and to his privileges and immunities.

STATEMENT

Appellant was married to the appellee in 1942 in the State of New York (R. 77), and a daughter was born to them on July 20, 1944 (R. 111). Until February, 1951, the legal residence of appellant and appellee had been in the State of New York (R. 74, 110). But in February, 1951, appellee left appellant's home and thereafter took the child and went to California, with-

out appellant's knowledge or consent (R. 112), where she has resided ever since (R. 111, 112). Appellee secured a divorce from appellant in California (R. 84) and has married another man (R. 79). At all pertinent times, the child has been in the sole and complete custody of appellee. This custody was awarded appellee as part of the divorce decree but no provision was made therein for support of the child.

This support proceeding was instituted by a petition filed by the appellee on March 26, 1952, in the Superior Court of the State of California, County of Los Angeles (R. 4). This petition or complaint was filed under the California Reciprocal Enforcement Support Law and sought support in the amount of $125 a month for the minor child born of the marriage between appellant and appellee. It was stated in the petition that the appellee was concurrently suing the appellant for divorce in the same California court (R. 5). Appellee also asserted that she was presently employed but was financially unable to provide for the support of the said child (R. 6). And the allegation was made that the appellee and the child had left appellant's abode in New York because of assertedly cruel and inhuman treatment on appellant's part and that, while able to do so, the appellant had not contributed to the support of the child since February 15, 1951 (R. 5-6). These allegations were all vigorously denied by appellant in his subsequent answer filed in the Domestic Relations Court in New York (R. 73).

Pursuant to the California statute, the Superior Court certified on April 15, 1952, that the petition had come on for hearing in the said court, that the appellee had given sworn testimony in corroboration of the allegations in the petition, and that certain findings

were made (R. 13-14). Among these findings were that the appellant, as father of the child, owed a duty of support toward the child, that no such support had been received, that the appellee and the child were financially unable to support themselves, that the sum of $125 a month was a reasonable amount to be contributed by the appellant for support of the appellee and child, and that the State of New York, County of Bronx, might obtain jurisdiction over appellant by virtue of his residence there (R. 13-14). The California court concededly had no jurisdiction to order appellant to provide such support, appellant not being present in California and there being no jurisdiction via publication (R. 114).

The Clerk of the California court was accordingly ordered to prepare certified copies of the complaint, the foregoing certificate and an authenticated copy of the California reciprocal enforcement of support law and transmit them all to the Clerk of the Domestic Relations Court of the City of New York, Family Court Division, County of Bronx, City and State of New York (R. 14). These papers were duly forwarded and the proceeding was docketed in the said Domestic Relations Court as "Docket #667/52, U.S.D.L. California" (see R. 15, 20, 85), under the reciprocal provisions of the New York Uniform Support of Dependents Law.

A hearing was held in the Domestic Relations Court on May 28, 1952, following which an order was made as of that date providing for the payment of $65 a month for the support of the child, and recommending that appellant have visitation of the child for one month each year, a recommendation that was not accepted by the California court. The appellant ap-

pealed from that order to the Appellate Division. On March 2, 1954, the Appellate Division reversed the support order because of "the informality of the record, the absence of any findings, formal or informal, and the ambiguity in the record as to whether respondent-appellant consented to the order". The matter was accordingly remitted to the Domestic Relations Court for proceedings de novo. *Anonymous* v. *Anonymous*, 283 App. Div. 770.[1]

In the Domestic Relations Court, following the remission of the case to it by the Appellate Division for de novo proceedings, appellant appeared specially to challenge procedural aspects of the proceeding and

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[1] Appellant then appealed to the Court of Appeals from the determination of the Appellate Division. He moved for an order certifying that a constitutional question was directly involved and staying proceedings in the Domestic Relations Court pending determination of the appeal. On May 27, 1954, the Court of Appeals denied the application and dismissed the appeal on the ground that no appeal lay as of right since the order of the Appellate Division was plainly non-final. *Anonymous* v. *Anonymous*, 307 N. Y. 671. An application for a stay of proceedings in the Domestic Relations Court pending petition to the United States Supreme Court for certiorari was denied by Mr. Justice Reed on July 8, 1954, on grounds of the lack of a final judgment.

In the meantime, appellant twice sought unsuccessfully to obtain a writ of prohibition in the Supreme Court, Bronx County, restraining on constitutional grounds the hearing of the support proceeding in the Domestic Relations Court. From the denial of the second application, appellant took a direct appeal to the Court of Appeals and moved for a certificate that a constitutional question was directly involved. On January 13, 1955, the Court of Appeals denied the application and dismissed the appeal on the ground that "there are questions other than the constitutional validity of a statute presented," thus precluding a direct appeal. *Landes* v. *Domestic Relations Court*, 308 N. Y. 756. An appeal from this order of dismissal was taken to the United States Supreme Court, which dismissed the appeal for want of jurisdiction. *Landes* v. *Domestic Relations Court*, 350 U.S. 805.

to test the constitutionality of the New York and California reciprocal statutes. The court then ordered the trial to proceed on the merits (R. 38) and appellant filed an answer on the merits (R. 69-76). This answer, as amended, included affirmative defenses to the effect that the New York and California reciprocal support of dependents' statutes were invalid under the Federal Constitution for the reasons set forth in this Jurisdictional Statement (R. 74-75). Thus it was claimed that the Uniform Support of Dependents Law was "a compact between states without the consent of Congress" (R. 74), that it operated "as a denial of due process" (R. 74), that it operated "as an abridgment of the equal protection of the laws" (R. 75), that it operated as "an abridgment of the privileges and immunities of the citizens of the United States" (R. 75), and that it attempted to confer jurisdiction on State courts that was "expressly reserved to the Federal Courts" (R. 74).

Trial of the issues commenced in the Domestic Relations Court by the issuance of a warrant of arrest against appellant (R. 22), later converted into a summons served upon appellant in the courtroom (R. 22). Several hearings were then had, extending in time from April 28 to December 22, 1954 (R. 20-167). Appellant was compelled to testify despite his constitutional objections (R. 134). Also introduced into the record were transcripts of testimony of appellee taken before the Superior Court, Los Angeles County, California, on July 19, 1954, (R. 76-83), an affidavit of appellee dated August 27, 1954, (R. 83-84), and appellee's sworn answers before the California court on November 10, 1954, to interrogatories posed to her by appellant (R. 109-127). In those answers, appellee

admitted that she and her present husband are now "financially able to support the child, but it is a great struggle to make ends meet" (R. 118).

Based upon this record, the Domestic Relations Court on February 25, 1955, held that the enactment by the State of New York of the Uniform Support of Dependents Law was constitutional in all respects (R. 15, 17-19, 207 Misc. 460). The court further determined that appellant was liable for the support of his child and that appellee had established by a preponderance of credible evidence that the child needed $20 a week for her maintenance and support (R. 19). After finding that appellant was financially able to make such a payment, the court ordered him to pay to the court the sum of $20 weekly retroactive to December 23, 1954 (R. 19). Payments were to be held by the Support Bureau of the court pending the diligent prosecution and the determination of the appeal from the order (R. 19).

On January 31, 1956, this order was unanimously affirmed, without opinion, by the Appellate Division, First Department (R. 171-172), the federal constitutional questions having been duly raised before that Court. 1 App. Div. 2d 772. The Court of Appeals of the State of New York, on May 31, 1956, unanimously affirmed the order of the Appellate Division. As stated in the accompanying opinion, this affirmance was based solely on the Court's conclusion that the New York statute was not violative of either the state or federal constitution. *Landes* v. *Landes*, 1 N. Y. 2d 358.

That Court held, in other words, that the reciprocity mentioned in the California and New York statutes was not the result of an agreement or compact requir-

ing the consent of Congress. And it held that the New York statute did not violate federal constitutional safeguards erected to assure due process to one charged with crime or the equal protection or the privileges and immmunities clauses of the federal Constitution. Finally, it held that the statute did not contravene any federal constitutional provision respecting trials of cases between citizens of different states.

On August 17, 1956, appellant duly filed a Notice of Appeal to this Court in the Appellate Division of the New York State Supreme Court, First Department, the court in which the record was lodged following the remittitur by the Court of Appeals.

THE QUESTIONS ARE SUBSTANTIAL

1. Do the reciprocity provisions of the New York and California statutes violate the compact clause of the Federal Constitution?

An important, substantial and novel question is raised as to whether the reciprocity provisions of the New York and California support of dependents statutes contravene Art. I, Sec. 10, subd. 3, of the Constitution of the United States. That constitutional provision forbids any State from entering into any agreement or compact with another State without the consent of Congress.

Substantially similar reciprocal statutes are now in effect in all forty-eight of the States and the territories of the United States, stemming from the efforts of the National Conference of Commissioners on Uniform State Laws.[2] As stated by the chairman of the com-

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[2] See, generally, Annotation, Construction and application of state statutes providing for reciprocal enforcement of duty to support dependents, 42 A.L.R. 2d 768.

mittee of that Conference that drafted the model or uniform law which forms the basis of the New York and California statutes, Brockelbank, *Is the Uniform Reciprocal Enforcement of Support Act Constitutional?* 31 Ore. L. Rev. 97, 98 (1952):

> The most general of the constitutional objections that, so far, have been expressed, is the assertion that the act violates parag. 3, sec. 10 of art. I of the United States Constitution which says that "no state shall, without the consent of Congrees, . . . enter into any agreement or compact with another state . . ." The argument is that the act is, properly speaking, a compact with other states and that, since the Congress has not given its consent, it is unconstitutional.

This constitutional problem, as Professor Brockelbank states, was one of "the more obvious and essential questions" that were in the minds of the drafters of this legislation.

The Court of Appeals below held that "the reciprocity mentioned in the California and New York Acts is not the result of an agreement or compact requiring the consent of Congress". 1 N. Y. 2d at 365. A similar holding was made by the Kentucky Court of Appeals in *Duncan* v. *Smith,* 262 S.W. 2d 373, 377, where the Kentucky uniform support law was said not to "bear any of the aspects of an agreement or contract between Kentucky and any other state", Kentucky being free to repeal the act any time.

It has also been said that these reciprocal statutes are not compacts within the constitutional sense because the respective Legislatures did not appoint representatives to meet or agree on anything and no-

body in any one of the enacting States ever wrote to anyone in any other enacting State proposing that any agreement or understanding be reached between the States. Each State merely passed the statute in the ordinary way as part of its own legislation and the law went into effect in accordance with local constitutional provisions. Brockelbank, *Is the Uniform Reciprocal Enforcement of Support Act Constitutional?* 31 Ore. L. Rev. 97, 98 (1952).

But this Court has interpreted this constitutional concept of an agreement or concept in terms that do not preclude reciprocal state legislation. Thus, in *Virginia* v. *Tennessee,* 148 U.S. 503, 517-518, this Court spoke of the terms "agreement" and "compact" as being "sufficiently comprehensive to embrace all forms of stipulation, written or verbal, and relating to all kinds of subjects". And in *Holmes* v. *Jennison,* 14 Pet. 540, 572, this Court referred to the fact that the word "agreement" does not "necessarily import any direct and express stipulation; nor is it necessary that it should be in writing". The word, said the Court, should be given "its most extended signification" and so applied "as to prohibit every agreement, written or verbal, formal or informal, positive or implied, by the mutual understanding of the parties".

An important and unresolved question is thus presented as to whether a compact or agreement within the scope of Art. I, Sec. 3, subd. 3 of the Constitution can take the form of joint or reciprocal legislation in two or more States. Can the requisite agreement or understanding be found in the language of the statutes of the enacting States, statutes which are adopted by

the ordinary legislative method?[3] Cannot such language constitute one of the "forms of stipulation" which this Court said comes within the comprehensive reach of the terms "agreement" and "compact"? Must the stipulation necessarily take the form of a separate, formal contract between the States? These are questions which find no authoritative answers in the opinions of this Court and which deserve and need decisive resolution.

Assuming the California and New York statutes here in question do constitute a form of "agreement" or "compact", a further important and unresolved question is presented as to whether this is the kind of compact to which the requirement of Congressional approval extends. The Court of Appeals below said it was not, that the agreements and compacts that are forbidden by the Constitution "are indubitably those having an impact on 'the just supremacy of the

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[3] That a compact may take the form of a uniform reciprocal law is suggested by the New York statute (McKinney's Session Laws of New York, 1955, Ch. 155, pp. 142-149) authorizing the Governor "to execute a compact on behalf of the State of New York with any other state or states legally joining therein in form substantially as follows: . . ." The form that follows is labelled "Interstate Compact on Juveniles" and provides that the contracting States solemnly agree on a uniform law which is set out in a form similar in character to that of the Uniform Reciprocal Enforcement of Support Act. The proposed compact provides for the welfare and protection of juveniles and of the public by permitting (1) the return, from one State to another, of non-delinquent juveniles who have run away from home, (2) the return, from one State to another, of delinquent juveniles who have escaped or absconded, (3) cooperative out-of-state supervision of delinquent juveniles on probation and parole, and (4) agreement for joint use of institutions and additional measures which any two or more States, parties to the compact, find desirable to undertake.

United States' or its political integrity or interference with sovereign treaty-making powers and other situations not pertinent here". 1 N.Y. 2d at 365. And in *Duncan* v. *Smith*, 262 S.W. 2d 373, 377, the Kentucky Court of Appeals denied that the Kentucky uniform support statute came within the meaning of the compact clause as defined by this Court in *Virginia* v. *Tennessee*, 148 U.S. 503, 519.

In *Virginia* v. *Tennessee*, this Court stated that (p. 519):

> Looking at the clause in which the terms "compact" or "agreement" appear, it is evident that the prohibition is directed to the formation of any combination tending to the increase of political power in the states, which may encroach upon or interfere with the just supremacy of the United States.

The vital question thus becomes whether the subject matter of this reciprocal legislation can fairly be said to increase the political power of New York and California while encroaching upon the just supremacy of the United States. The focal point of the legislation, of course, is the imposition of support liability upon certain parents or individuals. But it is only the parent or individual who uses the channels of interstate commerce and crosses one or more State lines, thereby avoiding his liability in the place wherein his dependent resides, who is affected by the reciprocal legislation. Only when the person owing the duty of support crosses State lines does this two-state legislation become effective. See Brockelbank, *Uniform Reciprocal Enforcement of Support Act*, 5 Ark. L. Rev. 349, 350 (1951).

A significant question is thus raised as to whether New York and California have intruded themselves into the area of interstate commerce in such a way as to encroach upon or interfere with the sovereignty of the United States under the commerce clause. Congress has undoubted authority to deal with those individuals who cross State lines and to impose liabilities upon them. See 18 U.S.C. § 1073 (punishing those who move in interstate commerce to avoid prosecution or giving testimony in State courts); 18 U.S.C. § 2421 (punishing those who cross State lines for immoral purposes). The extent to which State authority may actively exert itself within the field of interstate commerce presents a difficult problem. And it is a problem that, in the context of this case, is unresolved.

That the compact clause of the Constitution may be involved in the effort to achieve uniformity of State legislation on interstate matters has long been recognized. See Frankfurter and Landis, *The Compact Clause of the Constitution—A Study in Interstate Adjustments*, 34 Yale L. J. 685, 698 (1925). Attaining uniformity through the compact technique is one method of accommodating interstate problems. See *Gulley* v. *Apple*, 213 Ark. 350, where the compact method was used to adopt the Uniform Act for Out-of-State Parolee Supervision, providing that parolees may reside outside the State wherein convicted and sentenced, subject to supervision by the receiving State. Congress in that instance gave express approval to compacts between the States for such supervision of interstate crime prevention and enforcement of each State's criminal laws (4 U.S.C.A. § 111). And it is through the compact route that efforts are being made to adopt a uniform code dealing with juvenile delin-

quents who cross State lines. See McKinney's Session Laws of New York, 1955, Ch. 155, pp. 142-149.

Moreover, even if it be concluded that these reciprocal uniform statutes are not a compact in the constitutional sense, still unresolved would be the important question whether the States can constitutionally deal with the problem of interstate support without some form of Congressional action, by way of compact approval or otherwise. The importance of this issue is underlined by the fact that the statutes in question are quasi-criminal in nature and create a novel interstate judicial system, a two-headed court procedure wherein it is impossible to give full effect to the laws and procedures of either State. Delays, expense, confusion and inequities inevitably result from such an attempt to impose two judicial systems upon an interstate situation involving diversity of citizenship. It was just such a situation, with its attendant problems, which gave rise to the diversity jurisdiction of the federal courts. Whether this situation can constitutionally be dealt with by reciprocal legislation without the consent and approval of Congress is a significant and unresolved issue posed by this case.

The questions thus arising out of the active cooperation of California and New York in dealing with an interstate problem within the constitutional realm of Congress are both substantial and novel. The public importance of the issues is attested to by the fact that all of the States and territories now have adopted some form of the uniform support of dependents law and that when the constitutionality of that law was under similar attack in Kentucky, no less than thirteen State Attorneys General appeared as amici curiae in support of the legislation. *Duncan* v. *Smith,* 262 S.W. 2d 373

(Ky.). An adjudication of these novel questions would thus be helpful in providing authoritative guidance for the several States.

2. Do the reciprocal laws of New York and California operate to deprive appellant of his Federal Constitutional rights to equal protection of the respective State laws and to his privileges and immunities?

Another significant and novel question is raised by the ruling of the Court of Appeals that the reciprocal enforcement of the support order imposed on appellant does not violate the equal protection clause of the Federal Constitution and "may not be avoided or excused by resort to the immunities and privileges clause of the Federal Constitution (U. S. Const., art. IV, § 2)." 1 N. Y. 2d at 365.

It is undisputed that the minor child is under the complete and sole custody of appellee in California and that the appellee has now married another person. Under California law, the parent entitled to the custody of a child is primarily liable for the support of the child (Sec. 196, Cal. Civil Code).[4] Moreover, a parent is not bound to compensate the other parent for the voluntary support of his child without an agreement for compensation (Sec. 208, Cal. Civil Code).[5] And where

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[4] "The parent entitled to the custody of a child must give him support and education suitable to his circumstances. If the support and education which the father of a legitimate child is able to give is inadequate, the mother must assist him to the extent of her ability." See *In re Cattalini*, 72 Cal. App. 2d 662; *People* v. *Meads*, 28 Cal. App. 140; *Ex parte Perry*, 37 Cal. App. 189; *Blair* v. *Williams*, 86 Cal. App. 676.

[5] "A parent is not bound to compensate the other parent, or a relative, for the voluntary support of his child, without an agreement for compensation, nor to compensate a stranger for the support of a child who has abandoned the parent without just cause."

a husband receives his wife's children by a former marriage into his family and supports them it is presumed he does so as a parent (Sec. 209, Cal. Civil Code).[6]

These provisions of California law are obviously applicable to California citizens and are available to them when support liability is sought to be imposed. In this case, however, California has succeeded in imposing support liability against the appellant, a nonresident, without according him the benefits of these other California statutes. Under the support proceeding, as prosecuted in New York, appellant was adjudged only on the basis of New York law and was denied the rights he might have had under the California statutes.

By this two-state procedure, California has allowed an action to be instituted against appellant and support liability to be imposed against him without according him the right to rely upon and be adjudged by other pertinent California statutes. This may be one of the inevitable consequences of reciprocal legislation, but it raises a serious question as to whether California has thereby discriminated against a citizen of another State in favor of its own citizens. If it has, the privileges and immunities clause of the Constitution (Art. IV, Sec. 2, cl. 1) has been violated, *Hague* v. *C.I.O.*, 307 U.S. 496, and appellant has been denied the equal protection of the California laws, in violation of the Fourteenth Amendment.

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[6] "A husband is not bound to maintain his wife's children by a former husband; but if he receives them into his family and supports them, it is presumed that he does so as a parent, and, where such is the case, they are not liable to him for their support, nor he to them for their services." See *McKay* v. *McKay*, 125 Cal. 65.

Moreover, the procedure whereby appellee can institute a support action against appellant in the New York courts without submitting herself to the jurisdiction of the New York courts effectively deprives appellant of valuable rights he would otherwise have under New York law. In this case the appellant stands ready to prove that the appellee deserted him without cause and took the child to California without his knowledge or consent, all with the intent on appellee's part to secure a divorce and remarry in California and deprive appellant of "a full opportunity to have such possession of his child as will enable him to impart to it what from the father enters into the child's character, and to indulge the affection that a father feels and bestows, whereby the boy [or girl] may grow up in knowledge and love of him". *Ullman* v. *Ullman,* 135 N.Y.S. 1080, 1083.

Under New York law, the requirement for support payments by the father may be conditioned, suspended or limited in accordance with the wife's compliance with the husband's right of reasonable visitation. *In re Schwartz,* 113 N.Y.S. 2d 455; *Beddini* v. *Beddini,* 117 N.Y.S. 2d 511; *Bobinski* v. *Bobinski,* 137 N.Y.S. 2d 432. And where the wife, over the husband's objections, removed the children from New York to a foreign country for a period of years, the husband has been held entitled to a temporary suspension of support payments until the children were returned to New York where he might have the right of visitation. *Goldner* v. *Goldner,* 135 N.Y.S. 2d 337. But all such decisions are dependent upon the wife being subject to the jurisdiction of New York courts, enabling those courts to impose support liability on the husband in accordance with the equities involved.

In this case, however, New York courts must deal with only one party to the controversy. Since appellee has in no way submitted herself to New York jurisdiction, the New York courts can only impose liabilities on the appellant husband and must ignore any circumstances that might justify the counter-imposition of penalties or conditions on the appellee. In this statutory way appellee has been effectively denied the equal protection of the New York laws and his privileges and immunities as a New York citizen. See *Commonwealth of Pennsylvania ex rel. Dept. of Public Assistance* v. *Mong*, 160 Ohio St. 455. And, more importantly, he has been denied the natural desire to see, to know and to love his child. That denial stems from the imposition of a two-state judicial system wherein neither State can effectively deal with the realities and equities of the unfortunate situation in which the child finds herself.

CONCLUSION

For the foregoing reasons it is submitted that this Court has jurisdiction over this appeal and that probable jurisdiction should be noted so that a resolution may be had of the important and undecided Federal constitutional issues.

Respectfully submitted,

EUGENE GRESSMAN
1701 K Street, N. W.
Washington, D. C.
Counsel for Appellant

October 12, 1956

APPENDIX

APPENDIX

APPENDIX A

Opinion of the Court of Appeals

SYLVIA LANDES (SYLVIA SMITH), *Respondent*,

v.

PHILIP LANDES, *Appellant*.

Argued February 16, 1956; decided May 31, 1956.

DYE, J. In this appeal we deal with the reciprocal enforcement of support of a minor under the Uniform Support of Dependents Law (L. 1949, ch. 807, as amd., hereinafter called New York Act) and the Uniform Reciprocal Enforcement of Support Act of California (California Code of Civil Procedure, pt. 3, tit. 10-a, §§ 1650-1690, hereinafter called California Act), which are here challenged as constitutionally invalid enactments.

The appeal is here as of right (Civ. Prac. Act, § 588, subd. 1, par. [a]) from an order of the Appellate Division of the Supreme Court in the first judicial department, unanimously affirming, without opinion, an order of the Domestic Relations Court, Family Court Division, City of New York, Bronx County, directing the appellant to pay the sum of $20 weekly for the maintenance and support of his dependent minor daughter, aged 12½ years.

By way of factual background, it appears that the parties were married in New York City in 1942. Following the birth of the child in 1944 irreconcilable differences developed. The wife thereafter procured in the courts of California an absolute decree of divorce on the grounds of cruelty and was awarded the custody of the child without, however, obtaining any provision for the support of either herself or the child. The validity of the California divorce decree is not challenged. Thereafter on April 9, 1954 the mother remarried and is now living with her present husband in California.

This proceeding was initiated by the mother of the minor child pursuant to the California Act. It resulted in a

certificate finding that $125 per month was a reasonable amount for support and in an order directing the Clerk of the Superior Court of California, as initiating State, to forward the certified transcript of the proceeding had in that court to the Domestic Relations Court of the City of New York as respondent State for determination and enforcement, pursuant to the reciprocal provisions of the Uniform Statute (California Act, § 1676; New York Act, § 6). The defendant husband appeared specially to test jurisdiction, filed an answer challenging procedural aspects of the proceeding as well as the constitutional validity of the statutes under which it was brought (New York Act, § 6)[1] and at a hearing *de novo* took the stand in his own behalf to controvert the merits of the petitioner's allegations.

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[1] On March 2, 1954 a Domestic Relations Court order providing for payment of $65 per month was reversed on appeal by the Appellate Division, First Department, on technical grounds and the matter was remitted to the Domestic Relations Court for proceedings *de novo* (*Anonymous* v. *Anonymous*, 283 App. Div. 770).

On May 27, 1954 we denied leave to appeal to this court and, on our own motion, dismissed, for nonfinality, an appeal taken on constitutional grounds (*Anonymous* v. *Anonymous*, 307 N. Y. 671).

On July 8, 1954, Mr. Justice REED of the Supreme Court of the United States denied application for stay pending filing of petition for certiorari.

While the above was taking place, appellant instituted a prohibition proceeding in the Supreme Court. This was dismissed on May 21, 1954 (*Landes* v. *Domestic Relations Ct.*, N. Y. L. J., May 24, 1954, p. 9, col. 3).

The prohibition proceeding was renewed and again dismissed by order made November 26, 1954.

A direct appeal to our court on constitutional grounds from that order was dismissed on January 13, 1955 (*Matter of Landes* v. *Domestic Relations Ct.*, 308 N. Y. 756).

An appeal to the Supreme Court of the United States was dismissed (*Landes* v. *Domestic Relations Ct.*, 350 U. S. 805).

The New York Act specifically declares that a husband is responsible for the support of his child or children under 17 years of age residing or found in the same or another State having substantially similar reciprocal laws and he may be required to pay for their support according to his ability and this is so even if the marriage of the parents has been legally dissolved (§ 3, subds, [a], [g]). The Act also prescribes the procedure for enforcement of the reciprocal order (§ 4). Furthermore, the Act, by its specific terms, is limited to its avowed purpose, that is, to compel support of dependent wives, children and poor relatives within and without the State and to provide a procedure for enforcement thereof against persons residing in other States and territories of the United States having substantially similar reciprocal laws (Preamble to New York Act). It is also provided that the Act shall be construed as an additional remedy in no way affecting or impairing other existing remedies—whether civil or criminal—now available to the petitioner in relation to the same subject matter (§ 8) and so as "to effectuate its general purpose to make uniform the law of the states which enact it" (§ 9).

While we have not heretofore dealt with the constitutionality of the New York Act, three of the Appellate Divisions of the Supreme Court have recognized its validity by dealing with various other States (cf. *Wohlfarth* v. *Wohlfarth*, 1 A D 2d 658 [1st Dept.]; *Buongiorno* v. *Buongiorno*, 286 App. Div. 1019 [2d Dept.]; *Matter of Guyette* v. *Haley*, 286 App. Div. 451 [3d Dept.]).

We also note in passing that substantially similar reciprocal statutes have been enacted in all of the other States and territories of the United States (see McKinney's Cons. Laws of N. Y., Book 65, "Unconsolidated Laws" [1955 Supp.], § 2111 n.; Report 1953 Annual Meeting of the National Association of Attorneys General; *Commonwealth* v. *Shaffer*, 175 Pa. Superior Ct. 100 [1954], allocation refused by Pennsylvania Supreme Court on May 17, 1954, 175 Pa. Superior Ct. XXV; *Mahan* v. *Read*, 240 N. C. 641 [1954],

and when challenged in other States its constitutional validity has been upheld (*Duncan* v. *Smith*, 262 S. W. 2d 373 [Ky., 1953]; *Commonwealth of Pennsylvania, Use of Warren* v. *Warren*, 204 Md. 467 [1954]; *Freeman* v. *Freeman*, 226 La. 410 [1954]; *Commonwealth* v. *Shaffer, supra; Proctor* v. *Sachner*, 143 Conn. 9 [1955]; *Smith* v. *Smith*, 125 Cal. App. 2d 154 [1954]; *Whittlesey* v. *Bellah*,[2] 130 Cal. App. 2d 182 [1955], cert. denied 350 U. S. 821 [1955]).

In this court the appellant challenges, as he did in the courts below, the validity of the support order for the reason that the reciprocal provisions in the New York and California Acts, at least insofar as they may be applicable to him, are in violation of the Constitution of the United States in that they constitute an agreement or compact be-

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[2] *Whittlesey* involved the New York and California statutes here at issue. The parties were married in Virginia in 1937 and had one child. The wife obtained a decree of separation in New York in 1940. Two years later the parties were divorced in Nevada and a support agreement was incorporated in the divorce decree providing that the husband pay a maximum of $50 a month toward the support of the child. Several years later, the wife, who had remarried, instituted proceedings in our State under the Uniform Support Law seeking an increase in payments. The New York court recommended an increase, whereupon the proceeding was forwarded to the California courts where the child's father, a resident, was served. The father contended that he was denied due process and equal protection of the law because he had complied with the terms of the divorce decree, and not absconded or fled, had not received notice of the New York proceeding, and was denied the opportunity to confront his wife and her witnesses. The jurisdiction of the California court to enforce adequate support for the child was sustained even though the father, a California resident, had not been given notice of the initiary proceeding in New York. The California court commented that a more satisfactory record would have been presented if proof of such notice had been sent to the father by mail or had been served upon him personally. However, the court determined that in accordance with the public policy as set forth in the Uniform Support Law, and considering the welfare of the child, the case should not be dismissed because of lack of notice to the father of the New York proceeding.

tween the States without the required consent of Congress (U. S. Const., art. I, § 10, subd. 3) and, as such, are violative of the equal protection clause of both the Federal and State Constitutions (U. S. Const., art. IV, § 2; N. Y. Const., art. I, § 11), as well as constituting an inhibition on the safeguards accorded an individual when prosecuted for crime (U. S. Const., 6th Amdt.; N. Y. Const., art. I, § 6); that the New York Act usurps and disregards the exclusive jurisdiction of Federal courts over cases having a diversity of citizenship (U. S. Const., art. III, § 2, subd. 1) and, finally, that the Domestic Relations Court of the City of New York is without constitutional authority to take jurisdiction of the case (N. Y. Const., art. VI, § 18).

It seems clear beyond peradventure that the reciprocity mentioned in the California and New York Acts is not the result of an agreement or compact requiring the consent of Congress. The agreements and compacts that are forbidden by the United States Constitution (art. I, § 10, subd. 3) are indubitably those having an impact on "the just supremacy of the United States" (*Virginia* v. *Tennessee*, 148 U. S. 503, 519; *Monongahela Nav. Co.* v. *United States*, 148 U. S. 312) or its political integrity (*Florida* v. *Georgia*, 17 How. [U. S.] 491) or interference with sovereign treaty-making powers (*Barron* v. *Baltimore*, 7 Pet. [U. S.] 243, 249) and other situations not pertinent here (cf. U. S. C. A. notes on the Constitution).

Enforcement of proceedings to compel the support of dependent minor childen within and without the State is primarily of local concern to the States. Both at common law and by statute, New York has always treated a husband as absolutely responsible in keeping with his ability for the support of his dependent minor child or children (N.Y. City Dom. Rel. Ct. Act, § 101; Social Welfare Law, § 101) and there is no doubt whatever that neither a divorce or remarriage, nor the fact that the mother has legal custody of the child or children, terminates that liability (*Laumeier* v. *Laumeier*, 237 N. Y. 357, 364)

and this may be enforced regardless of residence (*Adams* v. *Adams*, 272 App. Div. 29, 30). Reciprocal enforcement of a support order aimed at this primary parental obligation may not be avoided or excused by resort to the immunities and privileges clause of the Federal Constitution (U. S. Const., art. IV, § 2). True, as the appellant points out, the California law provides in substance that a person having legal custody of a minor child is primarily liable for its care and support (California Civ. Code, § 196). This, obviously, is for the protection of the minor child or children and may not be construed so as to relieve a father of his primary responsibility in that regard, particularly when, as here, he is financially able, and has lost control and custody by reason of his own conduct for, as the California courts have said, that "would be a reproach upon the law". (*Pacific Gold Dredging Co.* v. *Industrial Acc. Comm.*, 184 Cal. 462, 466; *Matter of Cattalini*, 72 Cal. App. 2d 662.)

We reject as insubstantial the appellant's contentions based on the circumstances that his former wife took the child to California, that following dissolution of the marriage in that State she remarried, and that her present husband is better able to support the child than is he, since nothing can turn thereon affecting the constitutionality of the controverted statute.

Appellant's remaining objections are equally lacking in substance. The statute does not inhibit in any way the constitutional safeguards erected to assure due process to one charged with crime (U. S. Const., 6th Amdt.; N. Y. Const., art. I, § 6). True, the reciprocal enforcement of support is quasi-criminal in nature. However, in both New York and California the proceedings are held in a civil court and no punitive fine or penalty is imposed; the only redress for respondent's willful refusal to comply is to invoke the power of the court to punish for contempt, but even this may not be regarded as punishment for crime but rather for the enforcement of an order of the

court in a civil proceeding. The Domestic Relations Court of the City of New York had complete jurisdiction, notwithstanding anything said in the United States Constitution (art. III, § 2, subd. 1) respecting trials of cases between citizens of different States.

The California court does not exercise any jurisdiction over a resident of New York but acts only in behalf of the responding State of New York. The fact that the petitioner wife is a nonresident of New York does not prevent her from resorting to the New York courts in order to compel the father to contribute to the support of his minor child, nor does the nonresidence of the child preclude relief (N. Y. City Dom. Rel. Ct. Act, § 103, subd. 1; § 137, subd. 1; *Adams* v. *Adams, supra;* cf. *Duncan* v. *Smith, supra*).

The Domestic Relations Court is not without jurisdiction by reason of anything said in the New York Constitution relating to inferior courts. Section 18 of article VI specifically empowers the Legislature to establish Domestic Relations Courts and to confer upon them such jurisdiction as may be necessary "to compel the support of a wife, child, or poor relatives by persons legally chargeable therewith who abandon or neglect to support any of them." The appellant contends that this limits the jurisdiction of the Domestic Relations Court to those cases wherein abandonment or neglect is charged and that the New York Support of Dependents Law does not make abandonment or neglect a prerequisite to jurisdiction. Therefore, reasons the appellant, it is incongruous to allow the Domestic Relations Court to administer the New York statute. The answer to this argument is that the statute speaks not of neglect, but of neglect to support a dependent minor child. It is indisputable on this record that the appellant has neglected to support his minor child and it matters not that such child presently resides with her nonresident mother in California.

This all leads to the conclusion that the reciprocal provisions of the dependency support act as applied in this

case to the support of a minor child are not violative of either the Federal or State Constitutions and that the New York Act insofar as it relates to the reciprocal enforcement of support for a minor child is a valid enactment. We decide no other question.

The order should be affirmed.

CONWAY, Ch. J., DESMOND, FULD, FROESSEL and VAN VOORHIS, JJ., concur; BURKE, J., taking no part.

Order affirmed.

Judgment of Court of Appeals

No. 52.

In the Matter of

ANONYMOUS (SYLVIA SMITH, formerly SYLVIA LANDES), *Respondent*,

vs.

ANONYMOUS (PHILIP LANDES), *Appellant*.

BE IT REMEMBERED, That on the 15th day of February in the year of our Lord one thousand nine hundred and fifty-six, Anonymous (Philip Landes), the appellant—in this cause, came hereunto the Court of Appeals in person, and filed in the said Court a Notice of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the First Judicial Department. And Anonymous (Sylvia Smith, formerly Sylvia Landes), the respondent—in said cause, afterwards appeared in said Court of Appeals by Peter Campbell Brown, her attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

WHEREUPON, The said Court of Appeals having heard this cause argued by Mr. Philip Landes, in person, for the appellant, and by Mr. Fred Iscol, of counsel for the

respondent, brief filed by the Attorney General, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed.

And it was also further ordered, that the record aforesaid, and the proceedings in this Court, be remitted to the Appellate Division of the Supreme Court, First Judicial Department, there to be proceeded upon according to law.

THEREFORE, it is considered that the said order be affirmed as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Appellate Division of the Supreme Court, First Judicial Department, before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Appellate Division, before the Justices thereof, &c.

RAYMOND J. CANNON
Clerk of the Court of Appeals
of the State of New York.

May 31, 1956

APPENDIX B

New York—Uniform Support of Dependents Law

LAWS OF NEW YORK.—By Authority

CHAPTER 807 of the Laws of 1949, as Amended

AN ACT authorizing and prescribing the procedure for civil proceedings to compel the support of dependent wives, children and poor relatives within and without the state, and repealing chapter seven hundred ninety of the laws of nineteen hundred forty-eight, entitled "An act to amend the children's court act of the state of New York and the

domestic relations court act of the city of New York, in relation to conferring additional jurisdiction and powers upon all children's courts and the family court of the city of New York in support proceedings against persons residing in other states and territories of the United States having substantially similar or reciprocal laws"

Became a law April 25, 1949, with the approval of the Governor. Passed, by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

UNIFORM SUPPORT OF DEPENDENTS LAW

Section

1. Short title; purpose.
2. Definitions.
3. Persons legally liable for support of dependents.
4. Jurisdiction and powers of court.
5. Cases in which proceedings are maintainable.
6. Procedure.
7. Duty of petitioners' representatives.
8. Construction of act.
9. Uniformity of interpretation.
10. Separability.

Section 1. Short title; purpose. This act may be cited and referred to as the uniform support of dependents law.

The purpose of this uniform act is to secure support in civil proceedings for dependent wives, children and poor relatives from persons legally responsible for their support.

Sec. 2. Definitions. As used in this act, unless the context shall require otherwise, the following terms shall have the meanings ascribed to them by this section:

(a) "State" shall mean and include any state and territory of the United States and the District of Columbia.

(b) "Court" shall mean and include a family court, domestic relations court, children's court, municipal court and any other court, by whatever name known, in any state having reciprocal laws or laws substantially similar to this act upon which jurisdiction has been conferred to determine the liability of persons for the support of dependents within and without such state.

(c) "Child" includes a step child, foster child or legally adopted child and means a child actually or apparently under seventeen years of age, and a child over seventeen years of age who is unable to maintain himself and is likely to become a public charge.

(d) "Dependent" shall mean and include a wife, child, mother, father, grandparent or grandchild who is in need of and entitled to support from a person who is declared to be legally liable for such support by the laws of the state or states wherein the petitioner and the respondent reside.

(e) "Petitioner" shall mean and include each dependent person for whom support is sought in a proceeding instituted pursuant to this act.

(f) "Respondent" shall mean and include each person against whom a proceeding is instituted pursuant to this act.

(g) "Petitioner's representative" shall mean and include a corporation counsel, county attorney, state's attorney, commonwealth attorney and any other public officer, by whatever title his public office may be known, charged by law with the duty of instituting, maintaining or prosecuting a proceeding under this act or under the laws of the state or states wherein the petitioner and the respondent reside.

(h) "Summons" shall mean and include a subpoena, warrant, citation, order or other notice, by whatever name known, provided for by the laws of the state or states wherein the petitioner and the respondent reside as the

means for requiring the appearance and attendance in court of the respondent in a proceeding instituted pursuant to this act.

(i) "Initiating state" shall mean the state of domicile or residence of the petitioner.

(j) "Responding state" shall mean the state wherein the respondent resides or is domiciled or found.

Sec. 3. Persons legally liable for support of dependents. For the purpose of this act:

(a) A husband in one state is hereby declared to be liable for the support of his wife and any child or children under seventeen years of age and any other dependent residing or found in the same state or in another state having substantially similar or reciprocal laws, and, if possessed of sufficient means or able to earn such means, may be required to pay for their support a fair and reasonable sum according to his means, as may be determined by the court having jurisdiction of the respondent in a proceeding instituted under this act.

(b) A mother in one state is hereby declared to be liable for the support of her child or children under seventeen years of age residing or found in the same state or in another state having substantially similar or reciprocal laws, whenever the father of such child or children is dead, or cannot be found, or is incapable of supporting such child or children, and, if she is possessed of sufficient means or able to earn such means, she may be required to pay for the support for such child or children a fair and reasonable sum according to her means, as may be determined by the court having jurisdiction of the respondent in a proceeding instituted under this act.

(c) The parents in one state are hereby declared to be severally liable for the support of a child seventeen years of age or older residing or found in the same state or in another state having substantially similar or reciprocal

laws, whenever such child is unable to maintain himself and is likely to become a public charge.

(d) A child or children born of parents who, at any time prior or subsequent to the birth of such child, have entered into a civil or religious marriage ceremony, shall be deemed the legitimate child or children of both parents, regardless of the validity of such marriage.

(e) A child or children born of parents who held or hold themselves out as husband and wife by virtue of a common law marriage recognized as valid by the laws of the initiating state and of the responding state shall be deemed the legitimate child or children of both parents.

(f) A woman who was or is held out as his wife by a man by virtue of a common law marriage recognized as valid by the laws of the initiating state and of the responding state shall be deemed the legitimate wife of such man.

(g) Notwithstanding the fact that the respondent has obtained in any state or country a final decree of divorce or separation from his wife or a decree dissolving his marriage, the respondent shall be deemed legally liable for the support of any dependent child of such marriage.

Sec. 4. Jurisdiction and powers of court. For the purposes of this act:

(a) The court shall have jurisdiction regardless of the state of last residence or domicile of the petitioner and the respondent and whether or not the respondent has ever been a resident of the initiating state or the dependent person has ever been a resident of the responding state.

(b) The court of the responding state shall have the power to order the respondent to pay sums sufficient to provide necessary food, shelter, clothing, care, medical or hospital expenses, expenses of confinement, expenses of education of a child, funeral expenses and such other reasonable and proper expenses of the petitioner as justice

requires, having due regard to the circumstances of the respective parties.

(c) The courts of both the initiating state and the responding state shall have the power to order testimony to be taken in either or both of such states by deposition or written interrogatories, and to limit the nature of and extent to which the right so to take testimony shall be exercised, provided that the respondent is given a full and fair opportunity to answer the allegations of the petitioner.

Sec. 5. Cases in which proceedings are maintainable. A proceeding to compel support of a dependent may be maintained under this act in any of the following cases:

(a) Where the petitioner and the respondent are residents of or domiciled or found in the same state.

(b) Where the petitioner resides in one state and the respondent is a resident of or is domiciled or found in another state having substantially similar or reciprocal laws.

(c) Where the respondent is not and never was a resident of or domiciled in the initiating state and the petitioner resides or is domiciled in such state and the respondent is believed to be a resident of or domiciled in another state having substantially similar or reciprocal laws.

(d) Where the respondent was or is a resident of or domiciled in the initiating state and has departed or departs from such state leaving therein a dependent in need of and entitled to support under this act and is believed to be a resident of or domiciled in another state having substantially similar or reciprocal laws.

Sec. 5A Remedies of a public agency. Whenever the state or a political subdivision, or any official agency thereof, is furnishing support or is likely to furnish support to a dependent it shall have the same right to invoke the provisions of this act as the dependent to whom the duty of support is owed.

Sec. 6. Procedure. (a) A proceeding under this act shall be commenced by a petitioner by filing a verified petition in the court in the county of the state wherein he resides or is domiciled showing the name, age, residence and circumstances of the petitioner, alleging that he is in need of and is entitled to support from the respondent, giving his name, age, residence and circumstances, and praying that the respondent be compelled to furnish such support.

(b) If the respondent be a resident of or domiciled in such state and the court has or can acquire jurisdiction of the person of the respondent under existing laws in effect in such state, such laws shall govern and control the procedure to be followed in such proceeding.

(c) If the respondent be not a resident of or domiciled in or cannot be found in such state, a judge of such court shall certify that a verified petition has been filed in his court in a proceeding against the respondent under this act to compel the support of the petitioner, that a summons, duly issued out of his court for service upon the respondent has been returned with an affidvit to the effect that the respondent cannot with due diligence be located or served with such procees in the initiating state, that the respondent is believed to be residing or domiciled in the responding state and that, in his opinion, the respondent should be compelled to answer such petition and should be dealt with according to law, and he shall transmit such certificate and certified copies of such petition and summons to the appropriate court in the responding state.

(d) Any judge of a court in the county of the responding state in which the respondent resides or is domiciled or found, upon presentation to him of such certificate and certified copies of such petition and summons, shall fix a time and place for a hearing on such petition and shall issue a summons out of his court, directed to the respondent, duly requiring him to appear at such time and place.

(e) It shall not be necessary for the petitioner or the petitioner's witnesses to appear personally at such hearing, but it shall be the duty of the petitioner's representative of the responding state to appear on behalf of and represent the petitioner at all stages of the proceeding.

(f) If at such hearing the respondent controverts the petition and enters a verified denial of any of the material allegations thereof, the judge presiding at such hearing shall stay the proceedings and transmit to the judge of the court in the initiating state a transcript of the clerk's minutes showing the denials entered by the respondent.

(g) Upon receipt by the judge of the court in the initiating state of such transcript, such court shall take such proof, including the testimony of the petitioner and the petitioner's witnesses and such other evidence as the court may deem proper, and, after due deliberation, the court shall make its recommendation, based on all of such proof and evidence, and shall transmit to the court in the responding state a certified transcript of such proof and evidence and of its proceedings and recommendation in connection therewith.

(h) Upon the receipt of such transcript, the court in the responding state shall resume its hearing in the proceeding and shall give the respondent a reasonable opportunity to appear and reply.

(i) Upon the resumption of such hearing, the respondent shall have the right to examine or cross-examine the petitioner and the petitioner's witnesses by means of depositions or written interrogatories, and the petitioner shall have the right to examine or cross-examine the respondent and the respondent's witnesses by means of depositions or written interrogatories.

(j) If a respondent, duly summoned by a court in the responding state, wilfully fails without good cause to appear as directed in the summons, he shall be punished in

the same manner and to the same extent as is provided by law for the punishment of a defendant or witness who wilfully disobeys a summons or subpoena duly issued out of such court in any other action or proceeding cognizable by said court.

(k) If, on the return day of the summons, the respondent appears at the time and place specified therein and fails to answer the petition or admits the allegations thereof or, if, after a hearing has been duly held by the court in the responding state in accordance with the provisions of this section, such court has found and determined that the prayer of the petitioner, or any part thereof, is supported by the evidence adduced in the proceeding, and that the petitioner is in need of and entitled to support from the respondent, the court shall make and enter an order directing the respondent to furnish support to the petitioner and to pay therefor such sum as the court shall determine, having due regard to the parties' means and circumstances. A certified copy of such order shall be transmitted by the court to the court in the initiating state and such copy shall be filed with and made a part of the records of such court in such proceeding. The court shall place the respondent on probation on such terms and conditions as the court may deem proper or necessary to assure faithful compliance by the respondent with such order. The court shall also have power to require the respondent to furnish recognizance in the form of a cash deposit or surety bond in such amount as the court may deem proper and just to assure the payment of the amount required to be paid by the respondent for the support of the petitioner.

(l) The court making such order shall have the power to direct the respondent to make the payments required thereby at specified intervals to the probation department or bureau of the court and to report personally to such department or bureau at such times as may be deemed

necessary and the respondent shall at all times be under the supervision of such department or bureau.

(m) A respondent who shall wilfully fail to comply with or violate the terms or conditions of the support order or of his probation shall be punished by the court in the same manner and to the same extent as is provided by law for a contempt of such court or a violation of probation ordered by such court in any other suit or proceeding cognizable by such court.

(n) Upon the receipt of a payment made by the respondent pursuant to the order of the court of the responding state in any proceeding under this act, the probation department or bureau of such court shall forthwith transmit the same to the court of the initiating state.

(o) The probation department or bureau of the court in the responding state shall, not later than thirty days following the end of each fiscal year, furnish to the court of the initiating state an itemized statement under oath of all payments made by the respondent during such fiscal year for the support of the petitioner in such proceeding.

(p) The court of the initiating state shall receive and accept all payments made by the respondent to the probation department or bureau of the court of the responding state and transmitted by the latter on behalf of the respondent. Upon receipt of any such payment, and under such rules as the court of the initiating state may prescribe, the court, or its probation department or bureau, as the court may direct, shall deliver such payment to the dependent person entitled thereto, take a proper receipt and acquittance therefor, and keep a permanent record thereof.

Sec. 7. Duty of petitioners' representative. It shall be the duty of all petitioners' representatives of this state to appear in this state on behalf of and represent the petitioner in every proceeding pursuant to this act, at the

time the petition is filed and at all stages of the proceeding thereafter, and to obtain and present such evidence or proof as may be required by the court in the initiating state or the responding state.

Sec. 8. Construction of act. 1. This act shall be construed to furnish an additional or alternative civil remedy and shall in no way affect or impair any other remedy, civil or criminal, provided in any other statute and available to the petitioner in relation to the same subject matter.

2. This act shall not be construed to confer jurisdiction on the court of the initiating or responding state in any pending of future action for divorce, legal separation or annulment.

Sec. 9. Uniformity of interpretation. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it.

Sec. 10. Separability. If any part of this act or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the remainder of such act or the application thereof to other persons and circumstances.

Sec. 11. Chapter seven hundred ninety of the laws of nineteen hundred forty-eight, entitled "An act to amend the children's court act of the State of New York and the domestic relations court act of the city of New York, in rlation to conferring additional jurisdiction and powers upon all children's courts and the family court of the city of New York in support proceedings against persons residing in other states and territories of the United States having substantially similar or reciprocal laws," is hereby repealed.

Sec. 12. This act shall take effect immediately.

California—Uniform Reciprocal Enforcement of Support Act

CHAPTER 1290

An act to repal Title 10a, comprising Sections 1650 to 1681, inclusive, of Part 3 of the Code of Civil Procedure, and to add a new Title 10a, comprising Sections 1650 to 1690, inclusive, to Part 3 of said code, providing a civil and criminal procedure for enforcement of the duties of support.

The people of the State of California do enact as follows:

SECTION 1. Title 10a, comprising Sections 1650 to 1681, inclusive, of Part 3 of the Code of Civil Procedure, is repealed.

SEC. 2. Title 10a, comprising Sections 1650 to 1690, inclusive, is added to Part 3 of said code, to read:

TITLE 10a. UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT

CHAPTER 1. GENERAL PROVISIONS

1650. This title is known and may be cited as the Uniform Reciprocal Enforcement of Support Act.

1651. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

1652. The purposes of this title are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto.

1653. As used in this title unless the context requires otherwise.

(1) "State" includes any state, territory or possession of the United States and the District of Columbia in which this or a substantially similar reciprocal law has been enacted.

(2) "Initiating state" means any state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.

(3) "Responding state" means any state in which any proceeding pursuant to the proceeding in the initiating state is or may be commenced.

(4) "Court" means the superior court and when the context requires, means the court of any other state as defined in a substantially similar reciprocal law.

(5) "Law" includes both common and statute law.

(6) "Duty of support" includes any duty of support imposed or imposable by law, or by any court order, decree or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, judicial separation, separate maintenance or otherwise.

(7) "Obligor" means any person owing a duty of support.

(8) "Obligee" means any person to whom a duty of support is owed.

(9) "Prosecuting official" means the district attorney, city attorney, or city prosecutor charged with the prosecution of criminal offenses in the city or other area in which the obligor is alleged to be present.

1654. The remedies provided in this title are in addition to and not in substitution for any other remedies.

1655. Duties of support arising under the law of this State, when applicable under Section 1670, bind the obligor, present in this State, regardless of the presence or residence of the obligee.

Chapter 2. Criminal Enforcement

1660. The Governor of this State (1) may demand from the Governor of any other state the surrender of any per-

son found in such other state who is charged in this State with the crime of failing to provide for the support of any person in this State and (2) may surrender on demand by the Governor of any other state any person found in this State who is charged in such other state with the crime of failing to provide for the support of a person in such other state. The provisions for extradition of criminals not inconsistent herewith shall apply to any such demand although the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and although he had not fled therefrom. Neither the demand, the oath nor any proceedings for extradition pursuant to this section need state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding or other state.

1661. Any obligor contemplated by Section 1660, who submits to the jurisdiction of the court of such other state and complies with the court's order of support, shall be relieved of extradition for desertion or nonsupport entered in the courts of this State during the period of such compliance.

Chapter 3. Civil Enforcement

1670. Duties of support enforceable under this title are those imposed or imposable under the laws of any state where the alleged obligor was present during the period for which support is sought or where the obligee was present when the failure to support commenced, at the election of the obligee.

1671. Whenever the State or a political subdivision thereof furnishes support to an obligee, it has the same right to invoke the provisions hereof as the obligee to whom the support was furnished for the purpose of securing reimbursement of expenditures so made and of obtaining continuing support.

1672. All duties of support are enforceable by action irrespective of relationship between the obligor and the obligee. Jurisdiction of all proceedings hereunder shall be vested in the superior court.

1673. The complaint shall be verified and shall state the name and, so far as known to the plaintiff, the address and circumstances of the defendant and his dependents for whom support is sought and all other pertinent information. The plaintiff may include in or attach to the complaint any information which may help in locating or identifying the defendant including, but without limitation by enumeration, a photograph of the defendant, a description of any distinguishing marks of his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, or social security number.

1674. The prosecuting official may, upon the request of the court, represent the plaintiff in any proceeding under this title.

1675. A complaint on behalf of a minor obligee may be brought by a person having legal custody of the minor without appointment as guardian ad litem.

1676. If the court of this State acting as an initiating state finds that the complaint sets forth facts from which it may be determined that the defendant owes a duty of support and that a court of the responding state may obtain jurisdiction of the defendant or his property, it shall so certify and shall cause three copies of (1) the complaint, (2) its certificate, and (3) this act to be transmitted to the court in the responding state. If the name and address of such court are unknown and the responding state has an information agency comparable to that established in the initiating state it shall cause such copies to be transmitted to the state information agency or other proper official of the responding state, with a request that it forward them to the proper court, and that the court of the

responding state acknowledge their receipt to the court of the initiating state.

1677. A court of this State acting either as an initiating or responding state may in its discretion direct that any part of or all fees and costs incurred in this State shall be waived, including without limitation by enumeration, fees for filing, service of process, seizure of property, and stenographic service of both plaintiff and defendant, or either. Where the action is brought by or through the State or an agency therof, there shall be no filing fee, library fee, or reporter's fee.

1678. When the court of this State, acting either as an initiating or responding state, has reason to believe that the defendant may flee the jurisdiction it may (a) as an initiating state request in its certificate that the court of the responding state obtain the body of the defendant by appropriate process if that be permissible unler the law of the responding state; or (b) as a responding state, obtain the body of the defendant by appropriate process.

1679. The Attorney General is hereby designated as the state information agency under this title, and it shall be its duty:

(1) To compile a list of the courts and their addresses in this State having jurisdiction under this title and transmit the same to the state information agency of every other state which has adopted this or a substantially similar law.

(2) To maintain a register of such lists received from other states and to transmit copies thereof as soon as possible after receipt to every court in this State having jurisdiction under this title.

1680. When the court of this State, acting as a responding state, receives from the court of an initiating state the aforesaid copies, it shall (1) docket the cause, (2) notify the prosecuting official, (3) set a time and place for a hearing,

and (4) take such action as is necessary in accordance with the laws of this State to obtain jurisdiction.

1681. If a court of this State, acting as a responding state, is unable to obtain jurisdiction of the defendant or his property due to inaccuracies of inadequacies in the complaint or otherwise, the court shall communicate this fact to the court in the initiating state, shall on its own initiative use all means at its disposal to trace the defendant or his property, and shall hold the case pending the receipt of more accurate information or an amended complaint from the court in the initiating state.

1682. The court shall conduct proceedings under this title in the manner prescribed by law for an action for the enforcement of the type of duty of support claimed.

1683. If the court of the responding state finds a duty of support, it may order the defendant to furnish support or reimbursement therefor and subject the property of the defendant to such order.

1684. The court of this State when acting as a responding state shall cause to be transmitted to the court of the initiating state a copy of all orders of support or for reimbursement therefor.

1685. In addition to the foregoing powers, the court of this State when acting as the responding state has the power to subject the defendant to such terms and conditions as the court may deem proper to assure compliance with its orders and in particular

(a) To require the defendant to furnish recognizance in the form of a cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the defendant.

(b) To require the defendant to make payments at specified intervals to the probation officer of the county or the obligee and to report personally to such probation officer at such times as may be deemed necessary.

(c) To punish the defendant who shall violate any order of the court to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court.

1686. The court of this State when acting as a responding state shall have the following duties which may be carried out through the probation officer of the county:

(a) Upon the receipt of a payment made by the defendant pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating state, and

(b) Upon request to furnish to the court of the initiating state a certified statement of all payments made by the defendant.

1687. The court of this State when acting as an initiating state shall have the duty which may be carried out through the probation officer of the county to receive and disburse forthwith all payments made by the defendant or transmitted by the court of the responding state.

1688. Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this title. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

1689. Any order of support issued by a court of this State when acting as a responding state shall not supersede any previous order of support issued in a divorce or separate maintenance action, but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.

1690. Participation in any proceedings under this title shall not confer upon any court jurisdiction of any of the parties thereto in any other proceeding.

SEC. 3. If any provision hereof or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.